

I. REMARKS

The Office Action dated November 24, 2009, has been received and carefully noted. The above amendments to the claims, and the following remarks, are submitted as a full and complete response thereto.

By this Response, claim 1 has been amended to more particularly point out and distinctly claim the subject matter of the present invention. No new matter has been added. Support for the above amendments is provided in the Specification, at least, on page 6, lines 15-17. Accordingly, claims 1, 5, 17, and 19 are currently pending in the application, of which claim 1 is the only independent claim. Applicant respectfully requests reconsideration of claims 1, 5, 17, and 19.

In view of the above amendments and the following remarks, Applicant respectfully requests reconsideration and timely withdrawal of the pending rejections to the claims for the reasons discussed below.

Claim Rejections under 35 U.S.C. §103(a)

The Office Action rejected claims 1, 5, 17, and 19 under 35 U.S.C. §103(a) as being allegedly unpatentable over U.S. Patent No. 5,482,245 of Graves. The Office Action alleged that Graves discloses every element recited in the pending claims with the exception of a tree retaining member being adapted to retain a tree inserted therein without using any moveable mechanical means in the form of screws or bolts. The Office Action alleged that one of ordinary skill in the relevant art would have found it

obvious to modify the tree retaining member disclosed in Graves to provide a moveable mechanical means as recited in claim 1. Specifically, the Office Action further alleged that an omission of an element and its function in a combination where the remaining elements perform the same functions as before involves only routine skill in the art, and therefore the moveable mechanical means, as recited in claim 1, would have been obvious in view of the description in Graves. Applicant respectfully submits that claims 1, 5, 17, and 19 recite subject matter that is neither described nor suggested in Graves, nor obvious in view of the elements disclosed in Graves.

Claim 1, upon which claims 5, 17, and 19 depend, recites a tree stand including a fluid reservoir about a tree retaining member including tree gripping means. The tree gripping means include projections. The fluid reservoir includes a cylindrical or frustoconical member being closed at one end thereof by a base. The tree retaining member is connected to the base. The tree retaining member includes a substantially cylindrical hollow member. The tree gripping means includes a plurality of projections arranged on the interior surface of the tree retaining member. The plurality of projections extend in a radial fashion, inwardly from an interior surface of the tree retaining member. The projections run substantially axially with the tree retaining member and include a sharp or pointed portion arranged in use to at least partially penetrate the trunk of a tree inserted into the tree retaining member. The tree retaining member is adapted to retain a tree inserted therein without using any moveable mechanical means in the form of screws or bolts by resisting lifting of a tree inserted therein relative to the tree stand.

As will be discussed below, a combination of Graves and the knowledge of one of ordinary skill in the relevant fails to describe or suggest each and every element recited in claims 1, 5, 17, and 19, and therefore fails to provide the features of the claims discussed above.

Applicants respectfully submit that Graves fails to disclose or suggest every element recited in claim 1. Specifically, Graves fails to disclose or suggest, at least, “a plurality of projections arranged on the interior surface of the tree retaining member and extending in a radial fashion, inwardly from an interior surface of the tree retaining member,” as recited in claim 1 (emphasis added).

The Office Action referred to a plurality of fins 88 to allege that Graves discloses the projections recited in claim 1. Claim 1 recites, in part, that the plurality of projections extend “in a radial fashion, inwardly from an interior surface of the tree retaining member.” The plurality of fins 88, as disclosed in Graves, extend upward in the tree retaining member from the base. The plurality of fins 88 do not extend inwardly from an interior surface of the tree retaining member, which is a hollow cylindrical member (*see* Graves, Figure 5). One of ordinary skill in the relevant art would not have found it obvious to modify the plurality of fins 88 to extend in a manner as recited in claim 1 without substantial modification to the tree stand disclosed in Graves and without consideration of the disclosure of the present application. Therefore, Graves and the knowledge of one of ordinary skill in the relevant art, whether taken individually or in combination, fails to disclose or suggest every element recited in claim 1.

Claims 5, 17, and 19 depend from claim 1. Accordingly, claims 5, 17, and 19 should be allowable for at least their dependency upon an allowable base claim, and for the specific limitations recited therein.

Applicant respectfully requests withdrawal of the rejections of claims 1, 5, 17, and 19 under 35 U.S.C. §103(a). Applicants respectfully submit that claim 1, and the claims that depend therefrom, are now in condition for allowance

II. CONCLUSION

In conclusion, Applicant respectfully submits that Graves and the knowledge of one of ordinary skill in the relevant art, whether taken individually or in combination, fail to disclose or suggest every element recited in claims 1, 5, 17, and 19. The distinctions previously noted are more than sufficient to render the claimed invention non-obvious. It is therefore respectfully requested that all of claims 1, 5, 17, and 19 be allowed, and this present application be passed to issue.

If for any reason the Examiner determines that the application is not now in condition for allowance, it is respectfully requested that the Examiner contact, by telephone, Applicant's undersigned representative at the indicated telephone number to arrange for an interview to expedite the disposition of this application.

In the event this paper is not being timely filed, Applicant respectfully petitions for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,

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Enclosures: RCE Transmittal
Petition for Extension of Time